Supreme Court, U.S.
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No. 94-1034

In The

Supreme Court of the United States

October Term, 1994

JOHN LUCAS,

Petitioner,

v.

DR. ROBERT HAHN, DR. VINCENT CROCKENBERG, MR. STANLEY CARPENTER, all of JOHNSON STATE COLLEGE, JOHNSON, VERMONT,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Vermont

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

A. Introduction and Concise Statement of the Case 1

B. Perceived Misstatements of Law or Fact Set Forth In The Petition 3

C. Grounds For Denying Petitioner's Petition For A Writ of Certiorari 8

1. *Petitioner has failed to present with sufficient brevity and clearness whatever materials are essential for a ready and adequate understanding of the points requiring consideration* 8

2. *This matter does not present the "special and important reasons" necessary for the granting of a writ of certiorari* 8

3. *The Vermont Supreme Court's decision does not conflict with applicable decisions of this Court* 9

4. *The Petition does not present any new unsettled important questions of federal law* 12

5. *Petitioner failed to properly assert before the state courts several of the federal questions Petitioner now seeks to raise in his Petition for Writ of Certiorari* 12

6. *To the extent Petitioner seeks this Court review of the state court's resolution of the Vermont Access To Public Records Law issues raised below, this Court lacks jurisdiction to do so* 13

TABLE OF AUTHORITIES

Page

I. CONSTITUTIONAL PROVISIONS:

United States Constitution, Article 1, Section 9 . . 7, 12

United States Constitution, First Amendment. . . . 6, 12

United States Constitution, Fourth Amendment . . 6, 12

United States Constitution, Sixth Amendment . . . 6, 12

United States Constitution, Thirteenth Amendment 6, 12

United States Constitution, Due Process Clause (Fifth and Fourteenth Amendments) . . . 2, 4, 9, 10, 12

II. FEDERAL STATUTES:

20 U.S.C. § 1097 . . . . . 7, 12

20 U.S.C. § 1232(h) 7, 12

28 U.S.C. § 1257(a) 3

III. FEDERAL CASE LAW:

Hammerstein v. Superior Court of Calif., 341 U.S. 491 (1951) 8

Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978) 13

Layne and Bowler Corp. v. Western Well Works, 261 U.S. 387 (1922) 8

TABLE OF AUTHORITIES – Continued

Page

Missouri ex rel. Hurwitz v. North, 271 U.S. 40 (1926) 13

National Labor Relations Board v. Pittsburgh S.S. Co., 340 U.S. 498 (1951) 8

Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985) 9

Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955) 8

University of Missouri v. Horowitz, 435 U.S. 78 (1978) 9, 10

Utley v. St. Petersburg, 292 U.S. 106 (1934) 12

Webb v. Webb, 451 U.S. 493 (1981) 12

IV. State Case Law:

Lucas v. Hahn, 94-015, Slip Op. (Vt. Supreme Court July 15, 1994) 9, 10

V. State Statutes:

1 V.S.A. § 315 *et seq.* 2

VI. Other Authorities:

Supreme Court Rule 10.1 8

Supreme Court Rule 10.1(c) 9, 12

Supreme Court Rule 14.4 8

Supreme Court Rule 14.5 8

Supreme Court Rule 15.1 3

TABLE OF AUTHORITIES – Continued

Page

Supreme Court Rule 17 (former version) 9

Supreme Court Rule 33.3.a..... 8

Vermont Department of Education Regulation 4300 4

NOW COME Respondents, through their counsel, Sutherland & Collins, Inc., and file this Brief in Opposition to Petitioner's "Petition for Writ of Certiorari":

A. INTRODUCTION AND CONCISE STATEMENT OF THE CASE.

This case arises out of Petitioner's Spring 1992 academic dismissal from a graduate education degree student teaching program, following a grading dispute which occurred while Petitioner student-taught a high school class. Petitioner was a graduate student in the Education Department of Johnson State College (referred to below as "JSC"), a Vermont college. The graduate education degree program required Petitioner to complete a "student teaching" internship. Petitioner undertook to fulfill that requirement by teaching a Barre, Vermont history class under the supervision of a high school supervising teacher, who, beyond serving as Petitioner's supervising high school teacher, had no affiliation with JSC.

A grading dispute occurred between Petitioner and the supervising high school teacher as to grades to be given to the high school students in the class student-taught by Petitioner. The supervising teacher released grades, with which Petitioner did not agree. Rather than resolving the dispute by working with the high school administration, Petitioner wrote and mailed letters to the parents of the history class students, informing them that a grading "mistake" had occurred and other information. Petitioner also wrote a letter to his supervising high school teacher, which letter the high school principal also

reviewed and later described as "confrontational" and "extremely demeaning to an established professional". The incident led the high school principal to suspend Petitioner from the high school student teaching program due to "lack of professional ethics". The incident also led to Petitioner's expulsion from the JSC Education Department graduate program student teaching program, following a meeting with three Department officials.

Petitioner appealed the JSC Education Department decision and was afforded several levels of review, including meetings and review by the JSC Graduate Committee, the JSC Dean of Academic Affairs, and the JSC President.

During the pendency of these academic appeals, Petitioner inundated JSC officials with thirty-one separately filed document requests under the Vermont "Access To Public Records Act", 1 V.S.A. §§ 315-320. This law requires Vermont public agencies to produce copies of certain "public records".

In March 1993, Petitioner, acting *pro se*, commenced in Lamoille County Superior Court in Hyde Park, Vermont the lawsuit which gave rise to the petition under review. Petitioner filed that suit against Respondents, Dr. Robert Hahn (the President of JSC), Dr. Vincent Crockenberg (the Dean of Academic Affairs for JSC), and Stanley Carpenter (the general counsel for the Vermont States Colleges Corporation). The suit primarily alleged violations of the Vermont Access to Public Records Act, but also alleged Petitioner's federal due process rights had been violated.

Respondents filed a motion for summary judgment, which after Petitioner objected thereto and a hearing was held, was granted by the Lamoille Superior Court in an Order and Opinion dated November 29, 1993 (see Appendix to Writ of Certiorari at pages 12-16). Petitioner appealed that decision to the Vermont Supreme Court, which, following briefing and oral argument, issued an Order and Opinion dated July 15, 1994, affirming the entry of summary judgment and dismissal of Petitioner's complaint. (See Appendix to Writ of Certiorari at pages 3-10). Petitioner filed with the Vermont Supreme Court a motion for reargument, which motion was denied on August 23, 1994.

On or around November 21, 1994, Petitioner filed the pending petition for a writ of certiorari seeking review of the Vermont Supreme Court's final judgment, pursuant to 28 U.S.C. § 1257(a).

B. PERCEIVED MISSTATEMENTS OF LAW OR FACT SET FORTH IN THE PETITION.

Pursuant to Supreme Court Rule 15.1, Respondents identify the following perceived misstatements of fact or law set forth in the petition which may have a bearing on the question of what issues would properly be before the Court if certiorari were granted. The references given below to "Petition" refer to the pages in Petitioner's "Petition for Writ of Certiorari" where the referenced perceived misstatements of fact or law are made.

1. *Paul Sutherland, Esquire, is not a party to this matter.* (Petition, cover and pages 19, 20, 28, 29 and 31) Attorney Sutherland is an attorney who was consulted by

some of the JSC officials in responding to Petitioner's document requests and appeals, but he has never been a party to this action. The lower court decision and the Vermont Supreme Court decision which constitute the final judgment to which the Petition relates, reflect and confirm this fact. See Appendix to Writ of Certiorari at pages 4 and 12.

2. *Respondents deny that Petitioner's situation required that, under the Due Process Clause of the United States Constitution, he be granted more due process than that afforded him.* (Petition, pages 15-16, 26, 27, 28, 30, 39-41 and 43-57).

3. *Respondents deny that the referenced Vermont Department of Education Regulation 4300 applies to Petitioner's case.* (Petition, pages 11, 26, 39, 47, 48, 50-53 and 55). The Regulation does not apply to an academic proceeding such as the one involving Petitioner.

4. *Respondents deny that the Johnson State College "Code of Conduct" applied to Petitioner's case.* (Petition, pages 11, 45-46 and 48). The Code is inapplicable to academic proceedings such as the one involving Petitioner.

5. *Respondents deny Petitioner's claims that there was a "gross lack of mentorship" during his student teaching experience* (Petition, page 5); *that JSC's monitoring of that program was negligent or otherwise inappropriate* (Petition, pages 27 and 56); *and that Dr. Marilyn Page allegedly indicated in or around March 1992 that Petitioner might fail his student teaching internship.* (Petition, page 5).

6. *Respondents deny that Dr. Tilley of JSC allegedly agreed that the supervising high school teacher had engaged in "fabrications" which were "no less than academic fraud".* (Petition, page 7). Respondents also note that many of the alleged details concerning the grading incident referred to in the Petition, pages 6-8, were not presented to the State courts below.

7. *Respondents deny that there is any evidence presented that any JSC official allegedly informed Petitioner that he would be "black listed" with the Vermont Department of Education.* (Petition, page 12).

8. *Respondents also disagree with Petitioner's characterization of the April 9, 1992 letter from the Johnson State College Education Department* (see copy at Appendix to Writ of Certiorari, pages 18-19), *to the extent his characterization is inconsistent with the contents of the identified document.* (Petition, pages 12-13).

9. *Respondents deny that many of the alleged details concerning the May 28, 1992 Graduate Committee hearing were presented to the state courts below.* (Petition, pages 15-17).

10. *Respondents deny that Attorney Paul Sutherland was "posing as [Dr.] Towner" regarding any of the proceedings concerning Plaintiff.* (Petition, page 18).

11. *Respondents deny that Petitioner's January and February 1993 meetings with Respondent Crockenberg were "non substantive and evasive".* (Petition, page 19).

12. *Respondents deny that Attorney Paul Sutherland in his March 19, 1993 letter to Petitioner threatened Appellant with a "harassment lawsuit".* (Petition, page 20).

13. *Respondents deny that the March 23, 1993 appeal decision by the JSC Academic Dean is "inconsistent as to chronology and statements of fact".* (Petition, page 20).

14. *Respondents deny that Attorney Paul Sutherland was the "corporate agent of record" for any Respondent.* (Petition, page 21).

15. *Respondents deny that Petitioner was ever accused of "academic sedition"* (Petition, page 22) *or that Respondents only had the power as state actors to illegally proscribe, punish and steal.* (Petition, page 23).

16. *Respondents deny that at the October 19, 1992 hearing on the motion for summary judgment Respondents' counsel claimed that the issue was simply a grading matter over which the Vermont state court had no jurisdiction.* (Petition, page 24).

17. *Respondents deny that the Vermont courts failed to act on Petitioner's "motion to secure documents".* (Petition, page 24). Such motion was reasserted in Petitioner's motion to reargue the Vermont Supreme Court appeal and was denied by the Vermont Supreme Court in its August 23, 1994 Order denying Petitioner's motion for reargument, where the motion was reasserted.

18. *Respondents disagree with Petitioner's characterization of the Vermont Lamoille County Superior Court November 29, 1993 decision, to the extent Petitioner's description* (Petition, pages 25-26) *is inconsistent with the printed decision itself.*

19. *Respondents deny that Petitioner raised in any significant or substantial way in the proceedings below any alleged violations of the First, Fourth, Sixth and Thirteenth*

Amendments to the United States Constitution, Article 1, Section 9 of the United States Constitution or 20 U.S.C. §§ 1097 and 1232(h). (See Petition, pages iii, ix, 34-37, 41, 42 and 55-57).

20. *Respondents deny Petitioner's assertion that the Vermont Supreme Court rejected Petitioner's 180 plus page "voluminous case file" upon Appellees' motion.* (Petition, page 40). Petitioner's voluminous lower case file was entirely presented to the Vermont Supreme Court. The document which was stricken upon Respondents' motion before the Vermont Supreme Court was 180 page second brief (in addition to Petitioner/Appellants' Brief before the Vermont Supreme Court), which Petitioner presented to that court and labeled as a "Printed Case", which under the Vermont appellate rules properly refers to a document solely containing copies of pertinent documents presented to the lower court, analogous to the "joint appendix" in proceedings before this Court.

21. *Although it is part of the Appendix to Petitioner's Petition, Respondents deny that Petitioner fully read or presented to the Vermont Supreme Court the portion of Petitioner's "Appendix to Writ of Certiorari" set forth at pages 71-88 of that document.* Although Respondents understand that Petitioner has set forth this section merely to indicate a text Petitioner claims he read to the Vermont Supreme Court, Respondents also disagree with many of the statements of "law" or "fact" set forth in that portion of the Appendix.

22. *Although it is not part of Petitioner's main Petition, Respondents disagree with Petitioner's statement of alleged*

"facts" in the portion of the Petition Appendix entitled "Process Summary – Facts v. Deconstructions". Respondents also believe that that portion of the Appendix should not be considered as part of Petitioner's Petition, because to do so would allow Petitioner to circumvent the Supreme Court Rule 14.4 and 33.3.a page limitations.

C. GROUNDS FOR DENYING PETITIONER'S PETITION FOR A WRIT OF CERTIORARI.

Of course, this Court's review by writ of certiorari is not a matter of right, but subject to judicial discretion. Supreme Court Rule 10.1; *Hammerstein v. Superior Court of Calif.*, 341 U.S. 491, 492 (1951). The following reasons are among the several reasons why such discretion should be denied in this case.

1. *Petitioner has failed to present with sufficient brevity and clearness whatever materials are essential for a ready and adequate understanding of the points requiring consideration.* This is a sufficient reason for denying the Petition. Supreme Court Rule 14.5.

2. *This matter does not present the "special and important reasons" necessary for the granting of a writ of certiorari.* Supreme Court Rule 10.1. Certiorari is only granted where settlement of the principles involved is *"of importance to the public as distinguished from that of the parties,* and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal". *National Labor Relations Board v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951) (quoting, *Layne and Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393) (emphasis added); see also *Rice v. Sioux City Memorial*

Park Cemetery, Inc., 349 U.S. 70, 74 (1955) (noting "special and important reasons" within former Supreme Court Rule 17, relating to the granting of certiorari, relates to problems "beyond the academic or episodic"). The private dispute in issue here has little bearing to larger public issues, especially where the implicated due process principles are well delineated by this Court's former decisions. See Section C.3, *infra*.

3. *The Vermont Supreme Court's decision does not conflict with applicable decisions of this Court.* Under Supreme Court Rule 10.1(c), a factor weighing towards the granting of a petition for a writ of certiorari is where the state court has decided a federal question in a way that conflicts with applicable decisions of this Court.

That result has not occurred here. The Vermont Supreme Court correctly ruled that this case involved academic performance issues as, "[t]he records show that Plaintiff's handling of the grading disagreement prompted JSC's action, which was based on doubt about Plaintiff's ability to adhere to ethical standards and to cooperate with superiors in the school setting". *Lucas v. Hahn*, 94-015, Slip Op. at page 4 (Vt. Supreme Court July 15, 1994) (see Petitioner's Appendix at pages 4-10). See also *University of Missouri v. Horowitz*, 435 U.S. 78, 91, n.6 (1978) (noting that, in determining whether to dismiss a medical student on an academic basis, non-academic factors such as personal hygiene and timeliness may be as important in determining whether a student will make a good medical doctor). The Vermont Supreme Court then appropriately applied the settled academic due process principles espoused by this Court in *Horowitz, supra* and *Regents of the University of Michigan v. Ewing*, 474 U.S. 214,

222-228 (1985). The state court rightly found that formal judicial type hearings are unnecessary for academic hearings because such academic determination "requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making". *Lucas v. Hahn*, Slip Op. at page 5 (quoting *Horowitz*, 435 U.S. at 90). The Vermont Supreme Court then correctly concluded that under the facts Petitioner had been afforded appropriate due process:

> Plaintiff was given adequate pre-deprivation notice and an opportunity to be heard. He was clearly notified in advance of the reason for the hearing with the three education faculty members. Plaintiff does not dispute that he sent the letters to his supervising teacher and students; he used the informal meetings with JSC staff to explain his actions. Moreover, plaintiff does not contend that he was ignorant of the student-teacher program policies regarding confidentiality, respect for supervisors, and appropriate channels for airing disputes. Therefore, he received adequate notice of the nature of the proceedings and an opportunity to make his case to the individuals empowered to decide his case. JSC made available to plaintiff several levels of review before different members of the JSC faculty and administration, which included opportunities for plaintiff to present his case again. This array of procedures sufficed to minimize the risk of erroneous deprivation resulting from JSC's academic decision.

Lucas v. Hahn, Slip Op. at page 5. (See Petitioner's Appendix at page 8).

Indeed, in this case Petitioner was permitted extensive opportunity to present his view of the incident. The three panel Education Department rendered its decision only after they provided Petitioner with an informal hearing. Thereafter, Petitioner was allowed to appeal the Education Department's adverse decision to the JSC Graduate Committee, and permitted two extensive meetings with JSC's Dean of Academic Affairs, before the Dean issued his decision. Petitioner was provided an appeal of the Dean's decision with Respondent JSC President Robert Hahn, who himself conducted an extensive review. Petitioner was permitted extensive consideration at each stage of the academic appeal. For example, at the final stage of the academic appeal, JSC President Hahn did not render his decision until after he had reviewed Petitioner's letter to his high school supervising teacher, an 8 page document presented by Petitioner to the JSC Education Department, and the April 9, 1992 JSC Education Department decision; met with the Education Department members, reviewed their meeting with Petitioner and statements made in that meeting; met with members of the Graduate Council and discussed statements made in their meeting with Petitioner; met with the Academic Dean and reviewed with him the contents of Petitioner's two meetings with him; and conducted a detailed review of the entire correspondence between Petitioner and various members of the college spanning the time frame April 1992 through May 1993. See Petitioner's Appendix at pages 31-32.

Thus, considering the nature of the JSC proceedings and the procedures afforded Petitioner, the final judgment under review is entirely consistent with applicable

decisions of this Court. There is no substantial federal question to form the basis for review by certiorari by this Court, because Petitioner's contention of invasion of constitutional rights has been settled by previous decisions of this Court. See *Utley v. St. Petersburg*, 292 U.S. 106, 111-112 (1934).

4. *The Petition does not present any new unsettled important questions of federal law.* As described above, the case under review falls clearly within the framework of this Court's prior academic due process decisions. Therefore, the Petition does not present a situation where a state court has decided an important question of federal law which has not been, but should be, settled by this Court. Supreme Court Rule 10.1(c).

5. *Petitioner failed to properly assert before the state courts several of the federal questions Petitioner now seeks to raise in his Petition for Writ of Certiorari.* In seeking review by this Court of a state court decision, a Petitioner must establish that there is "no doubt" from the record that a claim under a federal statute or the United States Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim. *Webb v. Webb*, 451 U.S. 493, 501 (1981). The state court records in this case do not show that Petitioner properly raised in state court any alleged violations of (a) the First, Fourth, Sixth, and Thirteenth Amendments to the United States Constitution; (b) Article 1, Section 9 of the United States Constitution (prohibition against bills of attainer and ex-post facto laws); or (c) 20 U.S.C. §§ 1097 and 1232(h). (See Petition, pages iii, ix, 34, 35-37, 41, 42, and 56-57).

Further, the record is clear that neither of the lower courts addressed these allegedly raised federal issues in their written decisions. See Appendix at pages 4-16. Therefore, the state courts did not issue any opinions in conflict with any prior decisions by this Court as to these federal issues. Thus, even if these federal issues were adequately raised below (which Respondents deny), the fact they were not actually considered and decided by the state courts should weigh against granting of Petitioner's Petition.

6. *To the extent Petitioner seeks this Court review of the state court's resolution of the Vermont Access To Public Records Law issues raised below, this Court lacks jurisdiction to do so.* It is unclear from the Petition as to whether Petitioner seeks to have this Court also correct alleged misapplications of the Vermont Access To Public Records Act by the Vermont Supreme Court. To the extent Petitioner seeks such review, this Court lacks jurisdiction, as this Court is not one of general jurisdiction with the power to correct alleged errors in applying state law in state court proceedings. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 837 n.9 (1978); *Missouri ex rel. Hurwitz v. North*, 271 U.S. 40, 41 (1926).

WHEREFORE, Respondents respectfully request that this Court deny Petitioner's Petition for Writ of Certiorari and enter an appropriate Order denying that Petition.

DATED at Burlington, Vermont, this 6th day of January, 1995.

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